

M/023/007



DATE 7-19

TIME

OPERATOR mt

19 July 2000

To Wayne Hedberg

THE LAW OFFICES OF
VAN COTT, BAGLEY, CORNWALL & MCCARTHY

FOR DOGM Review &
Consideration -

50 South Main Street, Suite 1600
Post Office Box 45340
Salt Lake City, Utah 84145-0340
Telephone (801) 532-3333
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Best -

Steve Flechner
& Gene Webb

FAX to 801 559 3940

To	Telecopy No.	Confirmation No.
Stephen Flechner North Lily Mining Co.	(303) 293-2235	(303) 294-0427

From: H. Michael Keller

Phone: (801) 237-0287

Re: North Lily's Revised Draft of Stipulation and Consent Order with e-mailed memo
to DOGM counsel Kurt Seel

Comments:

Total Pages (including this page) 21
ORIGINAL WILL NOT FOLLOW

Date July 19, 2000

Client North Lily Mining Co.

Client/Matter Nos. 29349-61686

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IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL (801) 237-0292 AS SOON AS POSSIBLE.

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H. Michael Keller

From: H. Michael Keller
Sent: Wednesday, July 19, 2000 3:48 PM
To: atmain.kseel@state.ut.us
Subject: North Lily

Kurt, here's a marked revision of your original draft. I did not incorporate your rewrite of paragraphs 5 and 15. Although not written into the attached draft, North Lily would like to include a mechanism for partial bond release as it completes reclamation. We would like to discuss that concept with you.



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**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

**IN THE MATTER OF THE PETITION
FILED BY THE DIVISION OF OIL,
GAS AND MINING FOR AN ORDER
REQUIRING IMMEDIATE
RECLAMATION OF THE TINTIC
PROJECT SITE BY NORTH LILY
MINING COMPANY, JUAB COUNTY,
UTAH**

**STIPULATION AND CONSENT
ORDER**

Docket No. 2000-004
Cause No. M/023/007

This Stipulation and Consent Order is entered into between the State of Utah, Department of Natural Resources, Division of Oil, Gas and Mining ("Division") and the North Lily Mining Company, a ~~Celebrate~~ Utah company, ("North Lily" or "Operator"), and is approved and adjudicated as a final order by the Utah Board of Oil, Gas and Mining ("Board") this _____ day of _____, 2000.

FINDINGS AND CONCLUSIONS

1. The Division has made and determined the following Findings of Facts and Conclusions of Law, ~~which North Lily agrees are true and correct.~~ The Division is the Utah agency authorized to administer and enforce the Utah Mined Land Reclamation Act, Title 40

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Chapter 8, Utah Code Annotated, the Utah Minerals Regulatory Program, R-647-1 ~~through~~ ^{thru} R-647-5, and other Utah statutes, rules and regulations regarding mining and mine reclamation.

2. North Lily is a ~~Utah~~ ^{Colorado} corporation which is the operator of the Tintic Mining Project, also known as the Silver City Heap Leach Facility, located in northeast 1/4, Section 35, Township 10 South, Range 3 West, SLBM, Juab County, ~~“(Tintic Project” or~~ ^{“(Tintic Project” or} “Facility”), pursuant to Division Notice of Intent No. M/023/007.

3. North Lily actively operated the Tintic Project until 1995, at which time active leaching at the Facility ceased.

4. By its *Notice of Agency Action*, Cause No. M/023/007, Docket No.2000-004, dated March 10, 2000, which is hereby incorporated by reference into this Stipulation and Consent Order, a copy of which is attached and incorporated into this Stipulation and Consent Order, the Division alleged, inter alia, that the operator of record, North Lily had failed to comply with the Utah Mined Land Reclamation Act (Utah Code Annotated 40-8-12), the rules (R647-4-107), and the requirements of the Notice of Non-Compliance (NON) and the Finding of Non-Compliance (FON) issued by the Division with respect to the timely reclamation of the Facility, following two counts:

A. ~~The operator of record, North Lily, has failed to comply with the statute (Utah Code Annotated 40-8-12), the rules (R647-4-107), and the requirements of the Notice of Non-Compliance (NON) and the Finding of~~

~~Non-Compliance (FON) issued by the Division. This failure to comply with the statutes, the rules, and the NON and the FON is a failure to meet the objectives of the Utah Mined Land Reclamation Act, and requires an order of the Board allowing the Attorney General to bring action against the operator because of the likelihood that environmental harm will occur.~~

~~B. The operator of record, North Lily, through its written statements and failure to meet regulatory obligations has supplied statements which are materially false, which constitutes a violation of Utah Code Annotated 40-2-9 (1953, as amended), and is a willful and/or knowing evasion of the Utah Mined Land Reclamation Act.~~

5. The North Lily Mining Company denied the allegations ~~both counts~~ in its *Response of North Lily Mining Company to Notice of Agency Action*, dated March 30, 2000.

AGREEMENT AND ORDER

After full and complete negotiation of all matters set forth in the Division's *Notice of Agency Action*, Cause No. M/023/007, and upon mutual exchange of covenants contained herein, the parties intending to be legally bound, the Division and North Lily agree to settle this contested case on the following terms:

1. Upon execution by the Division and by North Lily, and upon the approval of the Board, this Stipulation and Consent Order is a legally binding agreement between the Division and North Lily, and it is a final order of the Board properly authorized and issued pursuant to Utah law and regulations. North Lily acknowledges the issuance and receipt of this order of the Board, and except as expressly set forth herein, waives all rights to appeal the Division's *Notice of Agency Action* or to appeal this Stipulation and Consent Order, ~~or to otherwise appeal contested matters described in the Notice of Agency Action.~~

2. Except as provided otherwise in this Stipulation and Consent Order, North Lily is ordered to, and agrees to, diligently commence, perform, and complete all Reclamation Activities described in Exhibit A, the approved Mining and Reclamation Plan on file with the Division and a copy of which is incorporated by reference into this Stipulation and Consent Order, and as described in Exhibit B, revised as of 7/13/00 dated 6/30/00, and titled "Reclamation and Closure Plan Schedule," a copy of which is attached to and made part of ~~incorporated by reference into~~ this Stipulation and Consent Order. To the extent the activities and schedule contemplated and described in Exhibit B differ from or are inconsistent with the activities and schedule described in Exhibit A, Exhibit B shall control. Exhibit B provides for periodic Assessment Review and Schedule Readjustment Meetings at which it is contemplated the parties may agree to changes and adjustments in the planned reclamation activities and the schedule for completing same. The parties hereto acknowledge and agree that Exhibit B has already been modified and is expected to be further modified from time to time as actual reclamation work occurs and closure planning continues. The parties hereto further acknowledge and agree that performance by North Lily has begun pursuant to the "Reclamation and Closure Plan Schedule" set forth in Exhibit B. However, Except for post-closure monitoring of the facility and maintenance of facilities, features and equipment required for post-closure care and post-closure fluid management, all field reclamation activities shall be completed by close of business on December 31, 2000.

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3. All reclamation work shall be performed by competent and experienced workers who are acceptable by the Division. Approval by the Division shall not be unreasonably withheld.

4. The Division and North Lily mutually agree that the Board should dismiss the Division's Notice of Agency Action, Cause No. M/023/007, with prejudice, and that any further enforcement of the matters described in that *Notice of Agency Action* shall be limited to enforcement of this Stipulation and Consent Order. Upon execution of this Stipulation and Consent Order by the Board, *Notice of Agency Action*, Cause No. M/023/007 is ordered dismissed with prejudice. North Lily understands and agrees that this Stipulation and Consent Order does not settle any notice of violation, nor any other civil or criminal enforcement action, currently brought by the state of Utah against North Lily except the above-described Division's *Notice of Agency Action*, Cause No. M/023/007 dated March 10, 2000. The parties understand and agree that nothing in this Stipulation and Consent Order or the parties execution thereof shall constitute any agreement or admission by North Lily, or its officers, directors, or employees with respect to the allegations set forth in the Division's *Notice of Agency Action*, Cause No. M/023/007 dated March 10, 2000, or constitute any waiver of or preclude the assertion by North Lily or its officers, directors, or employees of any defenses or claims they may have individually or collectively with respect to said allegations in any other proceedings. Notwithstanding anything to the contrary in this Stipulation and Consent Order, or any waiver of any defenses or

claims North Lily may have with respect to any suit or proceedings brought by the Board or Division to enforce this Stipulation and Consent Order.

~~5. North Lily agrees that any breach of this Stipulation and Consent Order would, at a minimum, constitute a violation of a Board order, and the Board may file suit against North Lily to enforce this Stipulation and Consent Order, to seek civil or criminal penalties against North Lily pursuant to Title 40, chapter 6, and to seek any other legal, injunctive, or equitable relief available to the Board. The Board may also authorize forfeiture of North Lily's Reclamation Bond(s) without providing North Lily any further notice or opportunity to challenge such forfeiture. North Lily expressly waives any rights it may have to prior notice of an alleged breach, including the thirty (30) day compliance notice described in Utah Code 40-6-11(3). North Lily agrees that the Board may bring suit in the name of the state against North Lily any time after becoming aware of a breach without providing North Lily notice or an opportunity to return to compliance with the terms of this Stipulation and Consent Order. Upon satisfactorily completing the reclamation work described in Exhibit A, North Lily may file a Request for Agency Action pursuant to R641-104 and seek a Board order which finds the reclamation has been completed in compliance with the terms of this Stipulation and Consent Order.~~

56. North Lily waives any and all rights or objections it may have to the form, content, manner of service and timeliness of the *Notice of Agency Action*, Cause No. M/023/007; to an informal or formal adjudication or judicial review of the *Notice of Agency Action* or its

answer thereto; and to service of a copy of this Stipulation and Consent Order, which shall be effective when signed by representatives of the Division, North Lily, and the Board; provided, however, that nothing in this Stipulation and Consent Order or the parties execution thereof shall constitute any agreement or admission by North Lily, or its officers, directors, or employees, with respect to the allegations set forth in the Division's Notice of Agency Action, Cause No. M/023/007 dated March 10, 2000, or constitute any waiver of or preclude assertion by North Lily or its officers, directors or employees of any defenses or claims they may have with respect to said allegations in any other proceedings.

67. The Board finds that the Division and the Board have satisfied all of the requirements of law and that the terms of this Stipulation and Consent Order are consistent with the protection of public health and safety, and it is in the public interest.

78. RECLAMATION REQUIREMENTS AND ACCESS

Except as otherwise provided in this Stipulation and Consent Order, Operator shall perform all reclamation activities in compliance with Utah statutes and regulations, including but not limited to, those administered by the Division.

In addition to the Board's and the Division's statutory authorities to enter and make inspections of the Facility for purposes of enforcing state laws and regulations, Operator expressly and unequivocally waives any and all rights it may have to exclude Division or Board representatives and agents from the Facility. Operator expressly agrees that it will, at all

reasonable times, provide Division representatives or Board members full and immediate access to the Facility for purposes of inspecting the reclamation work, and the failure of Operator to provide full and immediate access to the Facility at reasonable times shall constitute an immediate breach of this Stipulation and Consent Order. Operator's above-described waiver and access agreement shall remain in full force and effect until such time as the Board issues an order finding the reclamation work is complete.

89. EXISTING OBLIGATIONS UNAFFECTED

Except as specifically provided herein, nothing set forth in this Stipulation and Consent Order is intended, nor shall it be construed, to authorize any violation of any statute, regulation, order or permit issued or administered by the Division. Nothing set forth in this Stipulation and Consent Order is intended, nor shall be construed, to relieve or limit Operator's~~Operators's~~ obligations to comply with any existing or subsequent federal or state statute, regulation, permit or order.

910. RESERVATION OF RIGHTS

With regard to matters not expressly addressed by this Stipulation and Consent Order, the Division specifically reserves all rights to institute equitable, administrative, civil and criminal actions against Operator for any past, present or future violation of any statute, regulation, permit or order, which the Division is authorized to enforce, and North Lily specifically reserves all claims and defenses it may have with respect to any such actions.

104. TRANSFER OF SITE

The parties expressly intend that the duties and obligations under this Stipulation and Consent Order shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Facility or any part thereof. Until such time as the Board has issued an order finding that reclamation has been completed in accordance with the terms of this Stipulation and Consent Order, Operator shall serve a copy of this Stipulation and Consent Order upon any prospective transferee of the legal and equitable interest at least 30 days prior to contemplated transfer and shall simultaneously inform the Division in writing of such intent. If the transferee agrees to comply with the terms and conditions of this Stipulation and Consent Order, the duties and obligations of Operator under this Stipulation and Consent Order will not be modified, diminished, terminated or otherwise altered by the transfer or agreement.

112. CORRESPONDENCE WITH THE DIVISION

All correspondence with the Division concerning this Stipulation and Consent Order shall be sent first class mail and addressed to:

Wayne Hedberg
Division of Oil, Gas and Mining
P. O. Box 145801
Salt Lake City, Utah 84114-5801
Tel. no: _____

with copies to:

Kurt E. Seel, Esq.

Assistant Attorney General
Utah Attorney General's Office
P. O. Box 140857
Salt Lake City UT 84114-0857

123. CORRESPONDENCE WITH OPERATOR

All correspondence with Operator concerning this Stipulation and Consent Order shall be sent first class mail and addressed to:

North Lily Mining Company
1800 Glenarm Place, Suite 210
Denver, Colorado 80202
ATTN: Steven Fleschner, President

134. FORCE MAJEURE

For purposes of this Stipulation and Consent Order, the term "Force Majeure" shall mean any event arising from causes beyond the reasonable control of the Operator or its contractors and subcontractors, that delays or prevents the performance of any obligation. In the event that Operator is prevented from complying in a timely manner with any time limit imposed under in this Stipulation and Consent Order despite solely because of unprecedented acts of nature, such as naturally caused fires, flood, earthquake or other act of God entirely beyond the Operator's control and which Operator, and by the Operator's exercise of all reasonable diligence to perform the obligation in accordance with this Stipulation and Consent Order. In the event of a Force Majeure, is unable to prevent, or mitigate, then Operator may petition the Division for an extension of time. Operator expressly agrees that aAn increase in the cost of performing the

obligations set forth in this Stipulation and Consent Order ~~or Operator shall not constitute~~
~~circumstances beyond Operator's control. Operator expressly agrees that its economic inability~~
to comply with any of the obligations of this Stipulation and Consent Order shall not, in and of
themselves, constitute a Force Majeure and be grounds for any extension of time otherwise
available under this paragraph, unless such increase in costs or economic inability results from an
event of Force Majeure as provided under this paragraph.

Operator shall only be entitled to the benefits of this paragraph if it notifies the Division
within five (5) days by telephone, and then within ten (10) days in writing, of the date it becomes
aware or reasonably should become aware of the Force Majeure event impeding or preventing
performance. The written submission shall include all related documentation, as well as a
notarized affidavit from a responsible corporate official specifying the reasons for the delay, the
expected duration of the delay, and the efforts which have been made and are being made by
Operator to minimize the length of the delay. The Division shall extend the time for
performance of the obligations which are affected by the Force Majeure for such time as
necessary to allow the Operator to complete those obligations. Operator's failure to comply with
the requirements of this paragraph specifically in a timely fashion shall render the paragraph null
and of no effect to a particular incident involved.

Operator shall have the burden of proof as to the justification for an extension and the
length of such extension pursuant to this paragraph, both to the Division and in the event that

compliance with the terms and conditions of this Stipulation and Consent Order becomes an issue in a subsequent litigation. Such burden of proof shall be by clear and convincing evidence.

145. REMEDIES FOR BREACH

In the event of any breach of this Stipulation and Consent Order by Operator, the Division, or the Board shall notify the Operator in writing of the alleged breach and the Operator shall have 14 days from the date of the notice to cure the breach or engage in informal negotiations with the Division to reach a mutually acceptable resolution of the alleged breach. If the breach is not cured or otherwise resolved through informal negotiation within the 14-day period, the Division may without further advance notice to Operator pursue any available administrative or legal remedy, including proceedings before the Board for bond forfeiture or an action to enforce this Stipulation and Consent Order in district court. The Board or the Division may, in its sole discretion, informally grant advise Operator of the breach and give Operator a reasonable time, as determined by the Board or the Division, within which to correct the breach. However, the Board or the Division may pursue any available remedy without first informally advising Operator of the breach. In addition to any and all other forms of relief available to them, Operator agrees that, in the event the Division or the Board believes the Operator has breached this Stipulation and Consent Order, the Division may immediately enter the Facility and conduct all necessary reclamation and post-closure monitoring work itself, and collect all

~~moneys guaranteed by sureties provided by the Operator to the Division, without any authorization or approval by the Operator, and apply these moneys to all costs and expenses of reclamation, including the costs and expenses of obtaining these surety moneys from third parties.~~

All field reclamation, excepting facilities, features and equipment required for post-closure care and post-closure fluid management, shall be completed by North Lily by close of business on December 31, 2000. If the required reclamation is not completed by that date. However, if in the sole opinion of the Division, ~~one or more individual reclamation tasks described in Exhibit A have not been completed by the anticipated completion dates described in exhibit B, and in the sole opinion of the Division North Lily will not or cannot meet the final December 31, 2000 deadline,~~ the Division may, without further proceedings before the Board, immediately enter the Facility and obtain surety moneys, and take control over the existing reclamation activities and complete the reclamation and post-closure monitoring activities itself, without any authorization or approval by North Lily.

The Board may seek to enforce any breach of this Stipulation and Consent Order as a final order of the Board by filing suit in district court, and it may seek all legal, equitable, or injunctive relief available to it under the law, including but not limited to, reimbursement of Board and Division administrative costs, expenses and attorney fees arising from the breach or

from the necessity to file suit to enforce this Stipulation and Consent Order.

Nothing in this Stipulation and Consent Order shall constitute a waiver of or preclude Operator from asserting any claims or defenses Operator may have with respect to or in connection with any suit, action or proceeding brought by the Board or Division against Operator to enforce this Stipulation and Consent Order or otherwise.

156. RELEASE, DEFENSE, AND HOLD HARMLESS AGREEMENT

Operator shall release, defend, indemnify, and hold harmless the Division and the Board, and the agents, employees and representatives of the Division and the Board, from any and all claims, suits, injuries and damages which arise from, or are alleged to arise from, the matters addressed in this Stipulation and Consent order, including but not limited to, the reclamation work to be performed by Operator, except to the extent such claims, suits, injuries, and damages result from or arise out of the negligence or willful misconduct of the Division, the Board, or the agents, employees and representatives of the Division or the Board.

167. ENTIRE AGREEMENT

This Stipulation and Consent Order shall constitute the entire integrated agreement of the parties. No prior contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding. Except as provided in paragraph 134 (Force Majeure), no changes, additions, modifications or amendments to this Stipulation and Consent Order shall be

effective unless they are set out in writing and signed by the parties hereto. This Stipulation and Consent Order shall be interpreted pursuant to the laws of the State of Utah.

178. ATTORNEY'S FEES

The parties agree to bear their respective attorney's fees, expenses and other costs in the prosecution or defense of this matter arising prior to the execution and Board approval of this Stipulation and Consent Order.

189. DECISIONS UNDER CONSENT ORDER

Any future decision which the Division or Board may make under the provisions of this Stipulation and Consent Order shall not be deemed to be a final action of the Board or Division, and shall not be appealable to the Board or to any court. Any objection which Operator may have to said decisions will be preserved until the Division or the Board enforces this Stipulation and Consent Order. At no time, however, may Operator challenge the content and validity of this Stipulation and Consent Order, nor may Operator challenge the findings and conclusions agreed to in this Stipulation and Consent Order.

1920. IN WITNESS WHEREOF

The parties hereto have caused this Stipulation and Consent Order to be executed by the duly authorized representatives. The undersigned representatives of Operator certify under penalty of law that they are authorized to execute this Stipulation and Consent Order on behalf of Operator; that Operator consents to the entry of this Stipulation and Consent Order and the

foregoing findings as an order of the Board; and that Operator hereby waives its rights to appeal the Notice of Agency Action, this Stipulation and Consent Order, and the foregoing findings, conclusions, terms and conditions.

OPERATOR

NORTH LILY MINING COMPANY, a Utah ~~Colorado~~ company.

Stephen E. Flechner, President

W. Gene Webb, Executive Vice-President

Date: _____

DIVISION OF OIL, GAS AND MINING

Lowell P. Braxton, Director

Date: _____

THE BOARD OF OIL, GAS AND MINING

Dave D. Lauriski, Chairman

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NORTH LILY MINE

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Date: _____

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